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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEYHAN KARAOGUZ and JAMES BENNETT

Appeal 2009-014000
Application 10/675,458
Technology Center 2400

DECISION ON APPEAL[1]

Before SCOTT R. BOALICK, KARL D. EASTHOM, and STEPHEN C. SIU, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals[2] under 35 U.S.C. § 134 from the rejection of claims 1-38. (App. Br. 1.) We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Disclosed Invention[3]

The disclosed invention includes "a method for processing media for selection and playback in a communication network." (Spec. ¶ 33.) The method includes the step of "determining from outside a home, when personal media and/or broadcast media is scheduled in at least one constructed display that is displayed within the home." (*Id.*) "Information related to the personal media and/or broadcast media may be acquired from at least one media provider and the constructed display may be updated from outside the home based on the acquired information." (*Id.*)

Exemplary claim 1 follows:

> 1. A method for processing media for selection and playback in a communication network, the method comprising:
>
> determining when one or both of personal media and/or broadcast media is scheduled in at least one constructed display for presentation at a first geographic location, wherein said scheduling is performed at said geographic location;
>
> acquiring information related to said scheduled one or both of said personal media and/or said broadcast media from at least one media provider; and
>
> updating, at a second geographic location, said at least one constructed display based on said acquired information.

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[2] Appellant's Appeal Brief (filed January 22, 2009) ("App. Br.") and Reply Brief (filed June 29, 2009)("Reply Br."), and the Examiner's Answer (mailed April 27, 2009) ("Ans.") are referenced here.

[3] The ensuing description constitutes findings of fact.

The Examiner relies on the following prior art references:

Novak	US 2002/0104099	August 1, 2002
Ellis	US 6,774,926	August 10, 2004

Claims 1-38 stand rejected under 35 U.S.C. 103(a) based on Novak and Ellis.

ISSUES

Appellant's responses to the Examiner's positions present the following issues:

1. Did the Examiner err in finding that the combination of Novak and Ellis renders obvious the steps of: a) determining when personal or broadcast media is scheduled in a display that is presented at the same geographic location where scheduling is performed, b) acquiring information from a scheduled personal or broadcast media from a media provider and c) updating, at another geographic location, the display based on the acquired information, as required by claim 1, and as similarly required by claims 11, 21, and 32?

2. Did the Examiner err in finding that the combination of Novak and Ellis renders obvious the step of "transferring to said first geographic location said updated at least one constructed display for presentation at said first geographic location," as recited in claim 2, and as similarly recited in claims 12, 22, and 33?

3. Did the Examiner err in finding that the combination of Novak and Ellis renders obvious the step of "storing media broadcast content corresponding to said accessed subscription information," as recited in claim 4, and as similarly recited in claims 14, 24, and 35?

4. Did the Examiner err in finding that the combination of Novak and Ellis renders obvious the step of "communicating said stored media broadcast content to a location where said updated at least one constructed display is presented," as recited in claim 5, and as similarly recited in claims 15, 25, and 36?

5. Did the Examiner err in finding that the combination of Novak and Ellis renders obvious the step of "rescheduling presentation of one or both of said broadcast media and/or said personal media via said updated at least one constructed display to prevent scheduling conflicts," as recited in claim 8, and as similarly recited in claims 18 and 28?

FINDINGS OF FACT (FF)

Novak

1. Novak discloses a system and method in which "an individual can upload media objects to a server." (¶ 10.) "The client terminal of the user can be subscribed or provisioned such that information related to the media objects, such as media program listings, can be provided in an electronic program guide." (*Id.*) "The media program can thereafter be provided to the end user via a synthetic channel, which can be tuned to or selected by the end user as if tuning to a conventional television broadcast channel." (*Id.*)

2. Scheduling information and other program information about personal media may be provided to the system of Novak:

> A plurality of headings 704 identifies a corresponding plurality of fields 706 where the individual can enter media object information or preferences. As an example, the headings 704 can include identifiers for date, time slot, media object identifier (ID), media object description, file type, preview video, etc. Other fields may be present where the uploading individual can provide not just schedule information but also

> other program information, such as actors, players, personalities, director, story summary, previews of the media object (preview of an audio track or a preview video clip), etc. that are all accessible/displayable from the EPG 153.

(¶ 63.)

3. "In one embodiment of the invention, an upload source 122 is able to upload/store media objects to a server." (¶ 39.) "Examples of media objects that the upload source 122 can upload to the server or web site 124 can include, but not be limited to audio and video clips, JPEGs, recorded audio video clips of television programs, sequenced JPEGs with attached audio files, MPEGs, MP3 files, web camera video clips, flash animation, text and graphics, or other files and media file types." (*Id.*)

4. "If the individual schedules more than one media object for the same time slot, then the server or the interface 702 can notify the individual, and re-sequence the media objects appropriately." (¶ 65.)

5. Arrangements can be made to provide media programs "from the web site 124 and to provide/update the EPG 153 with media programs that are available from the web site 124." (¶ 41.)

Ellis

6. "An individual at home or at another suitable location may use user equipment 34 to create content for a personal television program or channel." (Col. 3, ll. 19-21.) "A contributor may set up a schedule for the personal television channel programming that the contributor has created." (Col. 11, ll. 46-48.) "Viewers may use a program guide or other interactive television application to view program schedule information." (Abstract.)

7. A contributor may be "a subscriber in a given cable system (i.e., the contributor's user equipment is connected to a cable system headend in

that system)." (Col. 14, ll. 25-28.) Contributors and viewers may use the same equipment:

> Contributors and viewers may use user equipment such as user television equipment (e.g., equipment based on a set-top box and television), user computer equipment (e.g., a personal computer or handheld computing device), or a cellular telephone.

(Col. 1, ll. 47-51.)

PRINCIPLES OF LAW

The Examiner bears an initial burden of factually supporting an articulated rejection. *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992). Under § 103, "'there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007) (citation omitted). On appeal, Appellant may rebut the Examiner's findings and reasoning with opposing evidence or argument. Failure to do so may constitute a waiver of potential arguments. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (precedential) (BPAI 2010) ("If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection."); *Hyatt v. Dudas*, 551 F.3d 1307, 1313-14 (Fed. Cir. 2008) (The Board may treat arguments appellant failed to make for a given ground of rejection as waived); 37 C.F.R. § 41.37(c)(1)(vii).

ANALYSIS

Issue 1- Independent Claims 1, 11, 21, and 32, and Dependent Claims 6, 7, 9, 10, 16, 17, 19, 20, 26, 27, 29, 30, 31, 37 and 38

Appellants assert that neither Novak nor Ellis disclose the step of determining when media is scheduled in a display "for presentation at a first

geographic location, wherein said scheduling is performed at said first geographic location." (App. Br. 7-8.) Appellants argue that the scheduling of Ellis is performed at the location of a contributor and displayed at a different location, the location of a viewer. (App. Br. 10; Reply Br. 5.) As explained by the Examiner, however, Ellis discloses that the scheduling that is performed by a contributor can be displayed at the contributor's location because "a contributor can be a subscriber in a given cable system." (Ans. 10; *accord* FF 6-7.) As also explained by the Examiner, "the contributor and the viewers may use the same user equipment thus enabling a contributor to receive scheduling information of personal and/or traditional television channels." (Ans. 9; *accord* FF 6-7.)

Appellants also argue that "[a] combination of Novak and any reference that teaches EPG is scheduled at a given location for presentation at the same location would render Novak inoperable" because Novak operates on the principle of creating and viewing EPGs at different locations. (App. Br. 10-11.) The Examiner finds that "it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teaching of the Novak reference with those of the Ellis et al. reference in order to allow a contributor to receive the personal channel listing that they have contributed." (Ans. 9.) Appellants have not explained persuasively how adding this additional feature of Ellis to Novak would render Novak inoperable, especially here where the Examiner's rejection does not contemplate a removal or substitution of any element in Novak's system, but rather, contemplates a mere additional option to the existing system.

Appellants also assert that "the combination of Novak-Ellis does not disclose or suggest at least the limitation of 'acquiring information related to said scheduled one or both of said personal media and/or said broadcast media from at least one media provider,'" as recited in claim 1. (App. Br. 11.) Appellants argue that "since Novak does not disclose that the upload source communicates anything else other than the personal media, there can be no acquisition from the upload source 122 of 'information related to said scheduled one or both of said personal media and/or said broadcast media from at least one media provider,' as recited in claim 1." (App. Br. 11-12.) As found by the Examiner, however, Novak discloses this claim element because an "individual is able to enter media object information and preferences." (Ans. 11, *accord* FF 2.) Moreover, as explained by the Examiner, the disclosed acquisition of information related to personal media satisfies the claim element because the element requires information from only one of personal media or broadcast media. (Ans. 11.)

Appellants also assert that "the combination of Novak-Ellis does not disclose or suggest at least the limitation of 'updating, at a second geographic location, said at least one constructed display based on said acquired information,'" as recited in claim 1. (App. Br. 12.) Appellants argue that in Novak, "there is no updating at the subscriber's location." (*Id.*) Appellants argue that the Electronic Program Guide (EPG) of Novak is instead generated outside of the subscriber's location and "then provided to the subscriber and stored at the STB 152 for subsequent display." *(Id.).* Appellants' argument is not persuasive. As explained *supra*, Ellis discloses that scheduling is performed at the subscriber's location (*i.e.*, a first geographic location). In addition, under Appellants' own interpretation,

Novak discloses updating and generating the display outside of the subscriber's location (*i.e.*, at a second geographic location.) Indeed, Novak teaches that arrangements can be made to provide media programs from a web site 124 and to "provide/update the EPG with media programs that are available from the web site 124." (FF 5.) For these reasons, it would have been obvious in light of the teachings of Novak and Ellis to update at a second geographic location the constructed display, as required by claim 1.

Therefore, we will sustain the Examiner's rejection of claim 1. We will also sustain the Examiner's rejections of independent claims 11, 21, and 32, and dependent claims 6, 7, 9, 10, 16, 17, 19, 20, 26, 27, 29, 30, 31, 37 and 38 because Appellants did not present any patentability arguments for these claims beyond those that Appellants presented for claim 1. (*See* App. Br. 7-13 and 17-20.)

Issue 2 – Claims 2, 3, 12, 13, 22, 23, 33, and 34

Appellants assert that "the combination of Novak-Ellis does not disclose or suggest at least the limitation of 'transferring to said first geographic location said updated at least one constructed display for presentation at said first geographic location,'" as recited in claim 2 and as similarly recited in claims 12, 22, and 33. (App. Br. 13.) Appellants argue that Ellis does not disclose "transferring of updated constructed display back to a geographic location where such constructed display was originally scheduled." (App. Br. 14; *see also* Reply Br. 7.) As previously explained, however, Novak discloses that the display may be updated outside of the subscriber's location and Ellis discloses that the display may be presented at the subscriber's location (i.e., the first geographic location.) *Supra*, pp. 7-8. Therefore, we will sustain the Examiner's rejection of claims 2, 12, 22, and

33. We will also sustain the Examiner's rejection of dependent claims 3, 13, 23, and 33 because Appellants did not present any patentability arguments for these claims.

Issue 3 – Claims 4, 14, 24, and 35

Appellants assert that "Novak-Ellis does not disclose or suggest at least the limitation of 'storing media broadcast content corresponding to said accessed subscription information,'" as recited in claims 4, 14, 24, and 35. (App. Br. 15.) Appellants argue that "Novak clearly does not disclose or suggest any storing of media broadcast content that corresponds to the accessed subscription information." (App. Br. 16 (emphasis omitted).) Appellants also argue that "Novak only discloses that personal media (not broadcast media) is being uploaded to a server." (*Id.* (emphasis omitted).) As found by the Examiner, however, Novak discloses that an individual can upload media objects to a server, that the client terminal of a user can be subscribed to receive the media objects, and that the media objects can be provided to the user via a synthetic channel. (Ans. 13; *accord* FF 1.) And the media objects — contrary to Appellants' argument — include a type of broadcast media: "recorded audio video clips from television programs." (Ans. 13 (emphasis omitted); *accord* FF 3.) Therefore, we will sustain the Examiner's rejection of claims 4, 14, 24, and 35.

Issue 4 – Claims 5, 15, 25, and 36

Appellants assert "that Novak-Ellis does not disclose or suggest at least the limitation of 'communicating said stored media broadcast content to a location where said updated at least one constructed display is presented," as required by claims 5, 15, 25, and 36. (App. Br. 16.) Appellants argue that "Novak only discloses that personal media (not

broadcast media) is being uploaded to a server" and that Novak "clearly does not disclose or suggest any storing of media broadcast content that corresponds to the accessed subscription information." (App. Br. 17.) As explained above, however, Novak discloses that an individual can upload media broadcast content to a server, and that a client terminal of a user can be subscribed to receive the media content. *Supra*, p. 10. Moreover, as found by the Examiner, "Novak teaches the transmittal of stored uploaded media objects to a client terminal via a synthetic channel." (Ans. 14-15; *accord* FF 1.) Therefore, we will sustain the Examiner's rejection of claims 5, 15, 25, and 36.

Issue 5 – Claims 8, 18 and 29

Appellants assert that "Novak-Ellis does not disclose or suggest at least the limitation of 'rescheduling presentation of one or both of said broadcast media and/or said personal media via said updated at least one constructed display to prevent scheduling conflicts,'" as recited in claims 8, 18, and 28. (App. Br. 20.) Appellants argue that Novak "does not disclose or suggest any updating of a constructed display or rescheduling via the updated constructed display." (App. Br. 20-21.) The Examiner finds, however, that Novak "teaches the re-sequencing of media objects, to be presented on an electronic program guide, if an individual at an upload source 122 schedules one or more media objects for the same time slot." (Ans. 16-17.) The Examiner's finding is supported because Novak discloses the prevention of scheduling conflicts when an individual schedules more than one media object in the same time slot by "re-sequencing of media objects, to be presented in an electronic program guide." (FF 4.) Therefore, we will sustain the Examiner's rejection of claims 8, 18, and 29.

DECISION

We affirm the Examiner's decision rejecting claims 1-38.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136. *See* 37 C.F.R. § 1.136(a)(1)(v) (2010).

AFFIRMED

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